

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF NORTH CAROLINA**
3 **WESTERN DIVISION**
 Civil Action No. 5:16-CV-298-BO

4 **GARY AND ANN CHILDRESS, RUSSELL**
5 **AND SUZANNAH HO, and MICHAEL**
6 **CLIFFORD, on behalf of themselves and others**
 similarly situated,

7 **Plaintiffs,**

8 **v.**

9 **JPMORGAN CHASE & CO., JPMORGAN**
10 **CHASE BANK, N.A., CHASE BANK USA,**
11 **N.A., and CHASE BANKCARD SERVICES,**
12 **INC.,**

13 **Defendants.**

STIPULATION CONCERNING
 PROTOCOL FOR PRODUCTION
 OF ELECTRONICALLY STORED
 INFORMATION

14 WHEREAS, the above-captioned action (the “Action”), brought by Plaintiffs Gary and
15 Ann Childress, Russell and Suzannah Ho, and Michael Clifford (“Plaintiffs”) against Defendants
16 JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., Chase Bank USA, N.A., and Chase
17 Bankcard Services, Inc. (collectively “Defendants” and, together with Plaintiffs, the “Parties”), is
18 pending before this Court; and
19

20 WHEREAS, the Parties have engaged in discussions regarding the format of production of
21 documents and electronically stored information (“ESI”) that are responsive to requests made by
22 the Parties; and
23

24 WHEREAS, the Parties will work in good faith to avoid unduly burdensome discovery
25 practices that are not proportional to the needs of the case, including collecting, reviewing, and
26 producing or retrieving substantial quantities of non-responsive ESI. In the event of a dispute or

1 disagreement, the Parties will meet and confer in a good faith effort to resolve such dispute or
2 disagreement. NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN THE
3 PARTIES, THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS:

4 **A. Preservation of ESI**

5 The parties acknowledge that they have an obligation to take reasonable and proportional
6 steps to preserve discoverable information in their possession, custody or control. With respect
7 to preservation of ESI, the parties agree as follows:

- 8 1. Absent a showing of good cause by the requesting party, the parties shall not
9 be required to modify the procedures used by them in the ordinary course of
10 business to back-up and archive data; provided, however, that the parties shall
11 preserve all discoverable ESI in their possession, custody or control.
- 12 2. The parties shall supplement their disclosures in accordance with Rule 26(e)
13 with discoverable ESI responsive to a particular discovery request or mandatory
14 disclosure where that data is created after a disclosure or response is made
15 (unless excluded under (A)(3) or (B)(1)-(2) below).
- 16 3. Absent a showing of good cause by the requesting party, the following
17 categories of ESI need not be preserved:
 - 18 a. Deleted, slack, fragmented, or other data only accessible by forensics;
 - 19 b. Random access memory (RAM), temporary files, or other ephemeral
20 data that are difficult to preserve without disabling the operating system;
 - 21 c. On-line access data such as temporary internet files, history, cache,
cookies, and the like;
 - 22 d. Data in metadata fields that are frequently updated automatically, such as
23 last-opened dates (see also Section (D)(5));
 - 24 e. Back-up data that are substantially duplicative of data that are more easily
accessible elsewhere;
 - 25 f. Server, system or network logs;
 - 26 g. Data remaining from systems no longer in use that is unintelligible on the
systems in use; and

- 1 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or
2 from mobile devices (e.g., iPhone, iPad, Android, and Blackberry
3 devices), provided that a copy of all such electronic data is routinely saved
 elsewhere (such as on a server, laptop, desktop computer, or “cloud”
 storage).

4 In the event preservation and/or collection of data is cost-prohibitive, the parties will
5 meet and confer in good faith to discuss cost-sharing.

6
7 **B. Privilege**

- 8 1. With respect to attorney-client privileged or attorney work-product ESI generated
9 for this case after the filing of the complaint, parties are not required to include
10 any such information in privilege logs.
- 11 2. Activities undertaken in compliance with the duty to preserve information are
12 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).
- 13 3. Information produced in discovery that is protected as privileged or work product
14 shall be immediately returned to the producing party, and its production shall not
15 constitute a waiver of such protection, if: (i) such information appears on its face
16 to have been inadvertently produced; or (ii) the producing party provides notice
17 within 15 days of discovery by the producing party of the inadvertent production.
- 18 4. No later than 60 days after each production, the parties will provide a privilege log
19 that complies with the requirements of Federal Rule of Civil Procedure 26. The
20 privilege log shall include a unique identification number for each document and
21 the basis for the claim (attorney-client privileged or work-product protection). For
22 ESI, the privilege log may be generated using available metadata, including
23 author/recipient or to/from/cc/bcc names; the subject matter or title and date
24 created. Should the available metadata provide insufficient information for the
25 purpose of evaluation the privilege claim asserted, the producing party shall
26 include such additional information as required by the Federal Rules of Civil

1 Procedure. Where there is a chain of privileged e-mails, the Producing Party need
2 only include one entry on the privilege log for the entire e-mail chain as long as
3 the log entry identifies that the entry refers to an e-mail chain and lists all recipients
4 of the latest email in the chain. Redacted documents need not be logged as long as
5 (a) for e-mails, the bibliographic information is not redacted and (b) for non-e-mail
6 documents, the redaction is noted on the face of the document.

7 **C. ESI Discovery Procedures**

- 8 1. On-site inspection of electronic media. Such an inspection shall not be permitted
9 absent a demonstration by the requesting party of specific need and good cause
10 or by agreement of the parties.
- 11 2. Search methodology. The parties shall timely attempt to reach agreement on
12 appropriate search terms, or an appropriate computer- or technology-aided
13 methodology, before any such effort is undertaken. The parties shall continue to
14 cooperate in revising the appropriateness of the search terms or computer- or
15 technology-aided methodology as necessary. In the absence of agreement on
16 appropriate search terms, or an appropriate computer- or technology-aided
17 methodology, the following procedures shall apply:
 - 18 a. A producing party shall disclose the search terms or queries, if any, and
19 methodology that it proposes to use to locate ESI likely to contain
20 discoverable information. The parties shall meet and confer to attempt to
21 reach an agreement on the producing party's search terms and/or other
22 methodology.
 - 23 c. Focused terms and queries should be employed; broad terms or queries,
24 such as product and company names, generally should be avoided.
 - 25 d. The producing party shall search both non-custodial data sources and ESI
26 maintained by the custodians.

- 1 3. Format. The parties agree that ESI will be produced to the requesting party with
2 searchable text, in a format to be decided between the parties. Acceptable formats
3 include, but are not limited to, native files, multi-page TIFFs (with a companion
4 OCR or extracted text file), single-page TIFFs (only with load files for e-
5 discovery software that includes metadata fields identifying natural document
6 breaks and also includes companion OCR and/or extracted text files), and
7 searchable PDF. Unless otherwise agreed to by the parties, Microsoft Excel, CSV
8 files, audio, video files, or other database files will be produced in native format.
9 This may not constitute a complete list of files for native production and does not
10 preclude parties from producing other files natively where appropriate.
- 11 a. Any produced native file will be named according to the first Bates number
12 of the corresponding electronic document (e.g., [Production
13 Number].xlsx). The Parties may designate documents as confidential via
14 slip sheets for native files or within the file name (e.g., [Production
15 Number][confidentiality designation].xlsx.
- 16 b. All TIFF formatted documents will be single page, black and white, Group
17 4 TIFF at 300 x 300 dpi resolution and 8 1/2 X 11 inch page size. If the
18 Receiving Party believes that document(s) needs to be imaged at a higher
19 resolution, different page size, or color in order to adequately understand
20 the contents of specific document(s), it shall make a reasonable request for
21 re-production of the document(s) in the different format. Any such request
22 should be reasonably tailored to the case and shall identify the documents
23 for which re-production is requested by Bates number. If the Parties
24 disagree about whether re-production is appropriate or necessary, they shall
25 meet and confer before bringing the matter to the Court's attention.
- 26 c. The following processing specifications shall apply to ESI produced in

1 TIFF, word processing, or Microsoft Excel documents:

- 2 (1) Tracked changes and revisions in word processing documents
3 should be included in the TIFF image;
- 4 (2) Word processing documents should include all headers, footers,
5 and footnotes;
- 6 (3) All date, time, and filename macros will be displayed as the macro
7 field code; and
- 8 (4) Where electronic, non-email documents (including but not limited
9 to word processing and Excel documents) include embedded files
10 or documents, the Parties agree to produce such documents intact,
11 absent a claim of privilege, work product, or other applicable
12 protection, so long as each embedded document contains
13 responsive information. To the extent the document or one or more
14 embedded documents is privileged, irrelevant, or non-responsive,
15 the responsive, non-privileged documents shall be produced and the
16 privileged, irrelevant, or non-responsive documents shall, at the
17 Producing Party's option, either (A) be Bates numbered in sequence
18 with the embedded documents and the redacted privileged
19 documents shown on a privilege log with corresponding Bates
20 numbers; or (B) include placeholders indicating the privileged,
21 irrelevant, or non-responsive documents were withheld, and
22 describe the removed privileged documents on a privilege log with
23 corresponding control numbers assigned by the Producing Party.

24 d. Microsoft PowerPoint presentations should be processed to show hidden
25 slides and speaker's notes.

26 e. The following processing specifications shall apply to compressed or

1 zipped files:

2 (1) All compressed or zipped ESI shall be unzipped or decompressed
3 before production; and

4 (2) To the extent a responsive, non-privileged compressed or zipped
5 file contains embedded files, or links to other files, such embedded
6 files or links to other files do not need to be produced initially, but
7 upon reasonable request, the Parties will meet and confer to discuss
8 production of such files.

9 f. The Parties agree to produce e-mail chains or families intact, absent a claim
10 of privilege, work product, or other applicable protection, so long as each
11 document contains responsive information. As a general matter, subject to
12 specific review, an e-mail message and its attachments shall not be
13 withheld from production based on the fact that one or more attachments
14 are privileged, irrelevant, or non-responsive. To the extent the message or
15 one or more attachments is privileged, irrelevant, or non-responsive, the
16 responsive, non-privileged documents shall be produced and the
17 privileged, irrelevant, or non-responsive documents shall, at the Producing
18 Party's option, either (A) be Bates numbered in sequence with the
19 attachments and the redacted privileged documents shown on a privilege
20 log with corresponding Bates numbers (though a redacted privileged
21 document does not need to be logged if it complies with the requirements
22 of Section B. Paragraph 4 above); or (B) include placeholders indicating
23 the privileged, irrelevant, or non-responsive documents were withheld, and
24 describe the removed privileged documents on a privilege log with
25 corresponding control numbers assigned by the Producing Party.

26 g. Unless otherwise agreed, all dynamic date and time fields, where such

1 fields are processed to contain a value, and all metadata pertaining to dates
2 and times will be standardized to Greenwich Mean Time (GMT). The
3 Parties understand and acknowledge that such standardization affects only
4 dynamic fields and metadata values and does not affect, among other
5 things, dates and times that are hard-coded text within a file. Dates and
6 times that are hard-coded text within a file (for example, in an e-mail
7 thread, dates and times of earlier e-mail messages that were converted to
8 body text when subsequently replied to or forwarded; and in any file type,
9 dates and times that are typed as such by users) will be produced as part of
10 the document text in accordance with the provisions herein.

11 h. To the extent information from databases and other structured ESI is
12 requested, the Parties agree to meet and confer regarding the appropriate
13 format of production and which fields are or may be subject to production.

14 4. Paper documents. All paper documents shall be produced as (1) .TIFF images for
15 black and white documents, or (2) .JPG images for color documents. Such
16 documents shall be accompanied by a cross-referenced load file, including
17 begbates, endbates, and attachment bates range. The Parties do not waive and
18 hereby reserve the right to make responsive documents available for inspection
19 pursuant to Federal Rule of Civil Produce 34. The parties agree to use reasonable
20 efforts to maintain the family relationships of paper documents by scanning and
21 Bates numbering those documents in sequential order. If a document is more than
22 one page, the unitization of the document and any attachments and/or affixed
23 notes shall be maintained as they existed in the original document. This
24 provision does not obligate any party to produce documents in a manner other than
25 that in which those documents were kept in the ordinary course of business.

26 5. Production of redacted documents. To the extent that any document produced in

1 TIFF form contains information that is redacted, such documents shall be produced
2 in the form of a redacted TIFF Image, with the extracted text based off the redacted
3 TIFF image. For documents produced in a form other than TIFF, the text should
4 be manipulated to remove redacted information and indicate that redaction has
5 occurred.

6 6. Bates Numbers. Bates numbers and any confidentiality designations should be
7 electronically branded on each produced image, or as otherwise provided in any
8 discovery confidentiality order and/or protective order concerning protection of
9 confidential or otherwise sensitive information that may be entered by the Court.
10 The confidentiality designation shall be “burned” into the documents image (where
11 applicable). No other legend or stamp will be placed on the document image. If
12 the page identifier or legend inadvertently obliterates, conceals, or interferes with
13 any information from the source document, the Receiving Party may request a
14 legible copy. Additionally, Bates numbering should:

- 15 a. be unique across the entire production in any given case;
- 16 b. maintain a constant length (0-padded) across the entire production;
- 17 c. contain no special characters or embedded spaces; and
- 18 d. be sequential within a given document.

19 7. De-duplication. Except as otherwise provided in this Stipulation, a Party is only
20 required to produce a single copy of a responsive document. Parties shall de-
21 duplicate globally within their own productions.

22 8. Metadata fields. If the requesting party seeks metadata, the parties agree that only
23 the following metadata fields need be produced: begbates, endbates, attachment
24 bates range, file extension; custodian; author/from; recipient/to, cc and bcc;
25 title/subject; file name; date and time sent, modified and/or received; and hash
26 value.

1 9. No production required. The Parties may exclude from collection, review, and
2 production ESI or data with file extensions that are not able to be processed or
3 natively viewed by standard means, or that typically contain no meaningful user-
4 created data and/or cannot be reviewed in any meaningful format, including those
5 file types contained on the list established by the National Institute of Standards
6 and Technology (“NIST”), including but not limited to: ani; bat; c; cab; cfg; class;
7 dll; ex_; exe; fon; hlp; ico; icon; inf; ini; isu; java; jpa; kqp; mpe; msi; ocx; out;
8 pcd; pcx; reg; sfw; sys; tag; ttf; and xp files.

9 **D. Confidentiality**

10 The Parties incorporate the provisions of any discovery, confidentiality, or protective order
11 concerning protection of confidential or otherwise sensitive information that may be entered by
12 the Court. For the avoidance of doubt, nothing in this Stipulation shall supersede or alter any
13 confidentiality order and/or protective order concerning the protection of confidential or otherwise
14 sensitive information that may be entered by the Court.

15 **E. Method of Production**

- 16 1. The Producing Party may produce materials by electronic transmission, such as
17 FTP or secure file transfer (e.g., Accellion). A production by electronic
18 transmission shall be considered complete when made available to the Receiving
19 Party by electronic transmission. Alternatively, or in addition to production by
20 electronic transmission, the Producing Party may produce materials on electronic
21 storage media such as USB hard drives or DVDs. If produced on electronic storage
22 media, each piece of electronic storage media shall be assigned a sequential
23 volume number that identifies the party to whom the volume is attributable (e.g.,
24 CHILDRESS001).
- 25 2. To maximize the security of information in transit, any media on which documents
26 are produced may be encrypted by the Producing Party. In such cases, the

Producing Party shall transmit the encryption key or password to the Requesting Party, under separate cover, contemporaneously with sending the encrypted media.

3. A party shall accompany each production of Documents with a cover letter specifying: (1) the volume or volumes comprising the production; and (2) the Bates range or ranges of the materials being provided on each volume.

Stipulated and Agreed: This the 24th day of March, 2017.

/s/ Brandon S. Neuman

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and Chase Bankcard Services, Inc.*

1 This the _____ day of March, 2017.

2
3 SO ORDERED

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5 _____
6 HON. TERRENCE W. BOYLE
7 United States District Judge
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Stipulation Concerning Protocol for Production of Electronically Stored Information** has been electronically filed with the Clerk of Courts this the 24th day of March, 2017 using the CM/ECF system, which will send notification of such filing to the following:

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